



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

November 6, 1950

Hon. Raymond E. Magee
County Attorney
Galveston County
Galveston, Texas

Opinion No. V-1116

Re: Legality of levying
tax for mosquito con-
trol in addition to
the maximum tax lim-
itation in Article
VIII, Section 9, Con-
stitution of Texas,
and related questions.

Dear Sir:

You have requested an opinion on the construc-
tion of Article 4477-2 of Vernon's Civil Statutes. Your
questions read as follows:

"QUESTION 1: The sixty days referred
to in this Act now having past, does this Act
require that the Commissioners' Court call the
election, or shall the same be called by the
County Judge without any action upon the part
of the Commissioners' Court?

"QUESTION 2: Does Section 2 of Article
4477-2 authorize the Commissioners' Court to
levy a tax of five cents on each One Hundred
Dollar tax valuation in the County, assuming,
of course, that the people authorize such levy
by a vote in the establishment of a mosquito
control district, in addition to the constitu-
tional limitation placed upon the Commis-
sioners' Court by Article 8, Section 9, of the
Constitution?

"QUESTION 3: Upon what fund should the
levy authorized by this Statute be made?

"QUESTION 4: Will the Commissioners'
Court be obligated to pay the election ex-
penses for the holding of this election?"

Article 4477-2, V.C.S., provides in part:

"Section 1. In all counties of this State which border on the Gulf of Mexico, the Commissioners Court may call an election within sixty (60) days after the effective date of this Act, and at subsequent elections when called by the County Judge upon his being petitioned by two hundred (200) qualified voters to call such election to determine if the qualified voters of such county desire the establishment of a Mosquito Control District to embrace all the territory within said county, for the purpose of eradicating mosquitoes in said area. . . .

"Sec. 2. The Commissioners Court in each county governed by the provisions of this Act may call an election within sixty (60) days after the effective date of this Act and at subsequent elections when called by the County Judge upon his being petitioned by two hundred (200) qualified voters to call such election to determine if the qualified property taxpaying voters of said county desire a levy of a tax not to exceed five cents (5¢) on each one hundred dollar tax valuation to finance the program provided in this Act. . . .

"Sec. 3. The elections provided in Section 1 and Section 2 shall be combined in one election; provided, however, that only qualified property taxpaying voters shall be authorized to vote to create such district and on the question of a tax levy as provided in Section 2."

Under the provisions above quoted, the commissioners' court upon its motion is only authorized to call an election "within sixty (60) days after the effective date of this Act." You are therefore advised in answer to your first question that the sixty-day period having elapsed, the commissioners' court cannot now call an election. An election may now be called only by the county judge "upon his being petitioned by two hundred (200) qualified voters" of the county.

Section 9 of Article VIII of the Constitution of Texas provides:

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" . . . in no event shall the total of . . . county taxes exceed eighty (80) cents on the one hundred dollars valuation, in any one year; . . ."

In construing Section 9 of Article VIII, it was held in Anderson v. Parsley, 37 S.W.2d 358, 363 (Tex.Civ. App. 1931, error ref.):

"The power of the county commissioners under the Constitution, art. 8, § 9, as amended December 19, 1890, to levy a tax of 25 cents on \$100 valuation to construct buildings, sewers, and other permanent buildings, being limited to that levy for all such purposes, a levy can be made for a courthouse and jail only so far as the limit has not already been reached for the other purposes. Stratton v. Commissioners' Court of Kinney County (Tex.Civ.App.) 137 S.W. 1170."

The construction of this section of the Constitution in the Anderson case has not been disturbed by the "reallocation amendment" adopted in 1944. In a letter to Hon. William N. Hensley, Criminal District Attorney, Bexar County, Texas, dated December 6, 1948, this office stated:

"There is now no statute authorizing the Commissioners' Court of Bexar County to create a hospital or health district with taxing power. Such a district could be authorized by the Legislature by the passage of a general law but the taxes which such a district could levy must be part of the 80¢ limit fixed by Article VIII, Section 9, Texas Constitution. In order to create a hospital or health district having power to levy taxes for operation and maintenance in addition to the maximum rate available under Article VIII, Section 9 of the Constitution for the General Fund, a constitutional amendment would be necessary. The Robert B. Green Memorial Hospital now has available for operation and maintenance the taxes received from a levy of 20 cents on the One Hundred Dollar valuation (\$100) as authorized by Art. 4437a, V.C.S., plus income derived from pay patients. The Legislature could amend this law and authorize a larger levy, but whatever additional levy was authorized

would have to come out of the 80 cent per one hundred dollar (\$100) maximum levy fixed for counties by Article VIII, Section 9 of the Constitution. That section provides that 'in no event shall the total of . . . county taxes exceed (80) cents on the one hundred dollars valuation, in any one year.'"

In view of the foregoing authorities, you are advised in answer to your second question that the tax levy authorized by Sections 2 and 4 of Article 4477-2 is not in addition to the constitutional limitation fixed by Section 9, Article VIII of the Constitution.

In answer to your third question, it is our opinion that the cost of operating a Mosquito Control District created for public health purposes of the county must be paid out of the general fund. Att'y Gen. Op. V-567 (1948).

In regard to your fourth question, you are advised that the holding of an election is a county purpose to be paid for by the county. Bexar County v. Mann, 138 Tex. 99, 157 S.W.2d 134 (1941). Therefore, the commissioners' court is obligated to pay the expenses of holding an election under the provisions of Article 4477-2.

SUMMARY

After sixty days from the effective date of Article 4477-2, V.C.S., an election for the establishment of a Mosquito Control District can be called only by the county judge upon being petitioned by two hundred qualified voters of the county.

The tax levy authorized by Sections 2 and 4 of Article 4477-2 is not in addition to the limitation fixed by Section 9, Article VIII of the Constitution. It must be included within the levy authorized by the Constitution for general fund purposes.

The commissioners' court is obligated to pay the expenses of holding an election under the provisions of Article 4477-2, V.C.S.,

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it being a "county purpose." Bexar County
v. Mann, 138 Tex. 99, 157 S.W.2d 134 (1941).

APPROVED:

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Yours very truly,

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By

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